

EXHIBIT E

Cobo, Luis E.

January 18, 2008

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(captions continue on following pages)

Videotaped deposition of LUIS E. COBO

Volume I

Washington, D.C.

Friday, January 18, 2008

8:00 a.m.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

52709dae-dbd0-4e87-9d3a-d575eb26360f

Cobo, Luis E.

January 18, 2008

Page 2	Page 4
<p>1 IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS</p> <p>2 201st JUDICIAL DISTRICT</p> <p>3 -----</p> <p>4 THE STATE OF TEXAS,)</p> <p>5 ex rel. VEN-A-CARE OF THE)</p> <p>6 FLORIDA KEYS, INC.,)</p> <p>7 Plaintiffs,) Cause No. GV401286</p> <p>8 vs.)</p> <p>9 ABBOTT LABORATORIES INC., et)</p> <p>10 al.,)</p> <p>11 Defendants.)</p> <p>12 -----</p> <p>13</p> <p>14 Videotaped deposition of LUIS E. COBO, held at</p> <p>15 the law offices of Jones Day, 51 Louisiana Avenue,</p> <p>16 N.W., Washington, D.C. 20001-2113, the proceedings</p> <p>17 being recorded stenographically by Jonathan Wonnell,</p> <p>18 a Registered Professional Court Reporter and Notary</p> <p>19 Public of the District of Columbia, and transcribed</p> <p>20 under his direction.</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Ven-A-Care of the Florida Keys,</p> <p>4 Inc.:</p> <p>5 JAMES JOSEPH BREEN, ESQ.</p> <p>6 The Breen Law Firm</p> <p>7 5755 North Point Parkway, Suite 39</p> <p>8 Alpharetta, Georgia 30022</p> <p>9 (770) 740-0008</p> <p>10 jbreen@breenlaw.com</p> <p>11</p> <p>12 On behalf of Abbott Laboratories, Inc.:</p> <p>13 R. CHRISTOPHER COOK, ESQ.</p> <p>14 LOUIS P. GABEL, ESQ.</p> <p>15 Jones Day</p> <p>16 51 Louisiana Avenue, N.W.</p> <p>17 Washington, D.C. 20001-2113</p> <p>18 (202) 879-3939</p> <p>19 christophercook@jonesday.com</p> <p>20 lgabel@jonesday.com</p> <p>21</p> <p>22</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S O F C O U N S E L</p> <p>2</p> <p>3 On behalf of the United States of America:</p> <p>4 RENEE BROOKER, ESQ.</p> <p>5 U.S. Department of Justice</p> <p>6 Civil Division, Commercial Litigation</p> <p>7 601 D Street, N.W., Room 9918</p> <p>8 Washington, D.C. 20004</p> <p>9 (202) 616-3797</p> <p>10 renee.brooker@usdoj.gov</p> <p>11</p> <p>12 On behalf of the State of Texas:</p> <p>13 MARGARET MOORE, ESQ.</p> <p>14 Office of the Attorney General of the</p> <p>15 State of Texas</p> <p>16 301 West 15th</p> <p>17 Austin, Texas 78701</p> <p>18 (512) 936-1319</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Dey, Inc. and Dey, L.P. and</p> <p>4 Mylan:</p> <p>5 WILLIAM ESCOBAR, ESQ.</p> <p>6 Kelley, Drye & Warren LLP</p> <p>7 101 Park Avenue</p> <p>8 New York, New York 10178</p> <p>9 (212) 808-7771</p> <p>10 wescobar@kelleydrye.com</p> <p>11</p> <p>12 On behalf of Roxane Laboratories and</p> <p>13 Boehringer Ingelheim:</p> <p>14 ERIC GORTNER, ESQ.</p> <p>15 Kirkland & Ellis</p> <p>16 200 East Randolph Drive</p> <p>17 Chicago, Illinois 60601</p> <p>18 (312) 861-2285</p> <p>19 egortner@kirkland.com</p> <p>20</p> <p>21</p> <p>22</p>

2 (Pages 2 to 5)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis E.

January 18, 2008

<p style="text-align: right;">Page 30</p> <p>1 tell you that I sat here and I remember a certain 2 conference that I went to and we had, it was a great 3 insight into Medicare billing. No. 4 Q. Was there any discussion at any of these 5 seminars that you can recall about how it is that 6 pharmacists either were required to or should fill 7 out claim forms when communicating their billed 8 charge to Medicaid or Medicare? 9 MR. BREEN: Objection, form. 10 A. Yes. 11 Q. What do you recall about that? 12 A. Going over in the Florida Medicaid in 13 particular, going over the billing reimbursement and 14 how the system is set up in order to take -- their 15 collection of information was reliant on a certain 16 amount of information being transmitted. And from 17 that the electronic system would then automatically 18 select a payment. 19 And like I said, it was an online 20 adjudication process. So if there were any 21 corrections or adjustments to be made based on the 22 information that was being transmitted from the</p>	<p style="text-align: right;">Page 32</p> <p>1 1 of 2000. 2 Q. Why did you close the pharmacy? 3 A. We had just come off of a long and hard 4 battle through Ven-A-Care. It was a very exhaustive 5 thing and a very demanding things and we were able 6 to get a reward on that based on the conclusion of 7 the claim that was finally settled by the 8 government. And it gave me the opportunity to get 9 out of the community type of practice and start 10 dedicating my time completely in Ven-A-Care. 11 Q. Do I hear you telling me that you made a 12 lot of money and didn't need to make money in a 13 community pharmacy anymore? 14 MR. BREEN: Objection, form. 15 A. Say that again. 16 Q. As I hear what you're telling me, it 17 sounds like you made a lot of money through 18 litigation with Ven-A-Care and no longer needed to 19 run a pharmacy in order to make a living? 20 MR. BREEN: Objection, form. 21 A. Well, I could have run the pharmacy and 22 continued to make a living. I was not not making a</p>
<p style="text-align: right;">Page 31</p> <p>1 pharmacy, then that would happen electronically. 2 And then there would be a feedback to the pharmacist 3 submitting the claim and the results of the claim 4 and how it was handled were shown. 5 Q. We've mentioned it a couple of times in 6 passing, but you have worked in the past both for 7 Ven-A-Care, which as I understand it was an infusion 8 pharmacy, correct? 9 A. Correct. 10 Q. And you have worked in the past for the 11 Cobo Pharmacy, which as I understand it was a retail 12 pharmacy? 13 A. Correct. A community pharmacy, yes. 14 Q. Could you tell me what are the years for 15 which you were working as a pharmacist for the Cobo 16 Pharmacy? 17 A. As a pharmacist -- I grew up in the 18 pharmacy. But as a pharmacist when I came out of 19 the University of Florida in 1976 I immediately 20 started working at Cobo Pharmacy with my father. I 21 eventually purchased the pharmacy and continued its 22 operation until -- I think the closing time was June</p>	<p style="text-align: right;">Page 33</p> <p>1 living running the pharmacy. 2 Q. Right. But you didn't need that money 3 anymore? 4 A. It was just that my interest from that 5 point on -- prior to that I had to juggle pharmacy 6 schedules and my time demand back and forth between 7 Ven-A-Care and Cobo Pharmacy. I'm having to hire 8 part time or full time pharmacists when I can find 9 it. I mean, it was a lot to fulfill my obligation 10 with Ven-A-Care. And as a result of that lawsuit 11 that we won, yeah, it enabled me to make that 12 transition, correct. 13 Q. How much money did you receive from the 14 settlement that you're referring to in 2000? 15 MR. BREEN: Objection, form. 16 A. Personally I -- I think it was before 17 taxes \$2.4 million. Before taxes. I hope that's an 18 accurate number. 19 Q. Was that the first payout of money from a 20 litigation from settlement that you had received 21 from Ven-A-Care? 22 MR. BREEN: Objection to form. I'm going</p>

9 (Pages 30 to 33)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis E.

January 18, 2008

<p style="text-align: right;">Page 102</p> <p>1 in regard to those types of communications that 2 counsel just mentioned and document reviews that 3 I've been involved in. You know, certainly data and 4 charts and things that I have put together -- not 5 been responsible for creating, but have been 6 responsible for helping to gather data -- that have 7 been used in some of the complaint amendments or 8 just have been used in the various databases and 9 charts and representations that Ven-A-Care has 10 produced over the years or has in its possession. 11 Q. Is there anything more that you can tell 12 me about anything that you know that Abbott has done 13 that's in any way wrongful? 14 MR. BREEN: Same objection, same 15 instruction. 16 A. I think the development of the home 17 infusion industry that Abbott participated in I 18 think certainly is an area that I think was wrongful 19 and part of the problem that we're dealing with 20 today. 21 Q. Again, you know about that because of 22 documents you've read and research you've done,</p>	<p style="text-align: right;">Page 104</p> <p>1 entire Ven-A-Care corporation sitting at this 2 deposition between the three of us here today? 3 Q. Yes, I do. 4 A. We all work together. And the structure 5 of our business besides being business partners 6 we're very longtime friends. And, you know, we've 7 all been president at some time or vice president 8 and officers of the corporation. But I think that 9 we oftentimes sit together and we share and 10 depending on what the issue or the topic or what the 11 demand is will determine on who's going to speak. 12 Q. So if I were looking to determine what 13 Ven-A-Care's position is on a particular matter 14 there's not one person to whom I could go to get 15 that answer; is that correct? 16 MR. BREEN: Objection, form. 17 A. There could be one person that you could 18 go to that would have more insight and more 19 involvement, you know, in that regard that has more 20 of an affinity for that. And depending on what area 21 of interest you have that might determine who that 22 person would be.</p>
<p style="text-align: right;">Page 103</p> <p>1 correct? 2 MR. BREEN: Objection, form. 3 A. Well, I think that was also an item of -- 4 in one of the depositions that I attended it was 5 also an issue that I think was brought up. But yes, 6 by and large I think with the documents, insight 7 from a deposition and discussions, I think that 8 would pretty much be it. 9 Q. Mr. Cobo, who currently speaks on behalf 10 of Ven-A-Care? 11 MR. BREEN: Objection, form. 12 Q. I can give you an example. 13 A. Yeah. 14 Q. Abbott, for example. The CEO runs the 15 company and he has various other officers who have 16 responsibilities and it devolves down in a fairly 17 rigid hierarchy as in any other major corporation. 18 Does Ven-A-Care have anything similar where people 19 have responsibilities that go from the top down and 20 are divvied up? 21 MR. BREEN: Objection, form. 22 A. I assume you realize that you have the</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Mine was a question more of authority 2 than knowledge. Is there a single person at 3 Ven-A-Care who is in charge of the show? 4 MR. BREEN: Objection to form. 5 A. Well, again, we have a president. If 6 that fills the legal requirement for that person, 7 that figurehead of authority, certainly you know 8 that sometimes going to the president or the CEO 9 doesn't give you the type of information you may be 10 wanting. So sometimes you have to go to other than 11 the president. And again, we don't have that type 12 of stringent structure, but depending on what time 13 frame over the past 15, whatever the number of years 14 it's been since our inception -- 20 years -- it 15 would probably determine who you would want to speak 16 to to get the best representative answer. 17 And I'm not trying to avoid your answer 18 here, but -- 19 Q. Who has been president of Ven-A-Care over 20 the years? 21 A. Initially I was. I can't tell you the 22 time that it changed, but I would want to say it was</p>

27 (Pages 102 to 105)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis E.

January 18, 2008

<p style="text-align: right;">Page 106</p> <p>1 probably in the mid-'90s. Zack Bentley became 2 president. Let's see. And then in -- upon Zack 3 taking his leave of absence then Mark Jones became 4 president. And so it's been us three. 5 Q. So Mr. Jones currently is president of 6 Ven-A-Care, correct? 7 A. Yes, sir. 8 Q. Is it your understanding -- let me step 9 back two steps. When you gave me your understanding 10 of the litigation and the issues it involved and 11 your knowledge of Abbott's conduct, were you 12 testifying with respect to both the DOJ and the 13 Texas case or do you have a different understanding 14 as to the Texas case? 15 MR. BREEN: Objection, form. 16 A. I think I answered in a rather broad 17 fashion to cover both aspects of obviously Medicaid 18 and Medicare concerns. And I did that 19 intentionally. So I would think that that from my 20 perspective is the answer that I would want to 21 commit to. I think that covers the federal and 22 Texas case.</p>	<p style="text-align: right;">Page 108</p> <p>1 just be a verdict for the defendant and that would 2 be it. 3 Q. How much money have you invested in these 4 cases? 5 MR. BREEN: Objection, form. 6 A. Well, for years on and off we've had to 7 fund our litigation. We've had -- from the office 8 there were times when the well ran dry. There were 9 times in the early days when we were taking cuts in 10 salary, not receiving anything and watching any 11 monies that had been accumulated or saved dwindle. 12 And it was a part of the reason that I had to stop 13 and devote more and more time into Cobo Pharmacy and 14 allow the new direction that Ven-A-Care was taking 15 and energy because we were losing in business. 16 I can't tell you how much money. After 17 2000 the money that we had set aside to into the 18 business to run the business had ran out. And Mark 19 Jones, John Lockwood and myself funded the company, 20 didn't take salaries, over a period of time started 21 working off of a line of credit from the bank and 22 essentially funded that aspect of the business.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Do you have a personal stake in the 2 outcome of this litigation? That is, the DOJ case 3 and the Texas case. 4 A. Well, I've invested a lot of time and 5 emotion and personal money and what have you into a 6 case, into something that I think is worthy and 7 worthwhile. And the only stake I would have is in 8 the event that either or both are successful in this 9 case. 10 Q. So if a jury were to return a verdict for 11 the defendant in either case you would be out money 12 and time and effort and emotion that you've expended 13 on the case, correct? 14 MR. BREEN: Objection, form. 15 A. If the jury -- 16 Q. Were to return a verdict for the 17 defendant in either case, you would lose the money, 18 time, effort and emotion that you've invested into 19 the case, correct? 20 MR. BREEN: Objection, form. 21 A. Well, the money, time, energy and effort 22 is already lost. You don't get that back. It would</p>	<p style="text-align: right;">Page 109</p> <p>1 How much that all has been over the 2 course of time, I really am not sure what that 3 figure would be. I'd have to get some sort of an 4 accounting. But between us we've had to go out on a 5 limb a couple of million dollars, I'd say. And as 6 lawsuits were settled and we've gotten money back in 7 we've been able to replace those funds. But there 8 was certainly no certainty of that when we were 9 going through that. 10 Q. So if you were to ballpark it you'd say 11 you have at least a million or two dollars invested 12 in the case? 13 A. If I had to ballpark it for those 14 considerations, you know, I would have to say so, 15 subject to review by my accountant. 16 Q. On the other hand, if the jury were to 17 return a verdict in favor of the plaintiffs is it 18 fair to say that you stand to gain potentially 19 millions of dollars from this case? 20 MS. BROOKER: Objection, form. 21 A. That would all depend on what the jury 22 ruled in favor of either the state of Texas or the</p>

28 (Pages 106 to 109)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis - Vol. II

March 4, 2008

Miami, FL

Page 272

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Case No. MDL No. 1456

Civil Action No. 01-12257-PBS

-----X

In Re: PHARMACEUTICAL INDUSTRY

AVERAGE WHOLESALE PRICE LITIGATION

-----X

(Captions continue on next page.)

VOLUME II

CONTINUED VIDEOTAPE DEPOSITION

OF LUIS COBO

Tuesday, March 4, 2008

21st Floor

2 South Biscayne Boulevard

Miami, Florida 33131

Reported by: Sherilynn McKay, RMR, CRR

Notary Public, State of Florida

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

2a2de594-ee14-4c97-895b-4db32fbd2e32

Cobo, Luis - Vol. II

March 4, 2008

Miami, FL

<p style="text-align: right;">Page 273</p> <p>1 IN THE DISTRICT COURT OF</p> <p>2 TRAVIS COUNTY, TEXAS</p> <p>3 Cause No. GV401286</p> <p>4 -----X</p> <p>5 THE STATE OF TEXAS</p> <p>6</p> <p>7 Ex rel.</p> <p>8</p> <p>9 VEN-A-CARE OF THE FLORIDA KEYS,</p> <p>10 INC.,</p> <p>11</p> <p>12 Plaintiffs</p> <p>13</p> <p>14 v.</p> <p>15</p> <p>16 ABBOTT LABORATORIES, INC., et al.,</p> <p>17</p> <p>18 Defendants.</p> <p>19 -----X</p> <p>20</p> <p>21</p> <p>22 (Captions continue on next page.)</p>	<p style="text-align: right;">Page 275</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 For Abbott Labs:</p> <p>4 JONES DAY</p> <p>5 By: R. CHRISTOPHER COOK, ESQ.</p> <p>6 51 Louisiana Avenue, N.W.</p> <p>7 Washington, DC 20001-2113</p> <p>8 christophercook@jonesday.com</p> <p>9</p> <p>10 For Ven-A-Care of the Florida Keys:</p> <p>11 THE BREEN LAW FIRM</p> <p>12 By: JAMES JOSEPH BREEN, ESQ.</p> <p>13 ALISON WARREN SIMON, ESQ.</p> <p>14 ANDREW SHELDON, ESQ.</p> <p>15 Suite 110</p> <p>16 3350 S.W. 148th Avenue</p> <p>17 Miramar, Florida 33027</p> <p>18 jbreen@breenlaw.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>
<p style="text-align: right;">Page 274</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF MASSACHUSETTS</p> <p>3 Civil Action No. 03-cv-11865-PBS</p> <p>4 -----X</p> <p>5 THE COMMONWEALTH OF MASSACHUSETTS,</p> <p>6</p> <p>7 Plaintiff,</p> <p>8</p> <p>9 - against -</p> <p>10</p> <p>11 MYLAN LABORATORIES, INC., et al.</p> <p>12</p> <p>13 Defendants.</p> <p>14 -----X</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 276</p> <p>1 A P P E A R A N C E S (CONTINUED)</p> <p>2</p> <p>3 For the United States Department of Justice:</p> <p>4 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>5 By: ANN ST. PETER-GRIFFITH, ESQ.</p> <p>6 99 NE 4th Street</p> <p>7 Miami, Florida 33132</p> <p>8</p> <p>9 For Roxane Labs, Boehringer Ingelheim and Ben</p> <p>10 Venue Laboratories:</p> <p>11 KIRKLAND & ELLIS</p> <p>12 By: ERIC GORTNER, ESQ.</p> <p>13 200 East Randolph Drive</p> <p>14 Chicago, Illinois 60601-6636</p> <p>15 egortner@kirkland.com</p> <p>16</p> <p>17 For Dey, Inc. and Mylan:</p> <p>18 KELLEY DRYE</p> <p>19 By: WILLIAM A. ESCOBAR, ESQ.</p> <p>20 101 Park Avenue</p> <p>21 New York, New York 10178-0002</p> <p>22 wescobar@kelleydrye.com</p>

2 (Pages 273 to 276)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis - Vol. II

March 4, 2008

Miami, FL

<p style="text-align: right;">Page 389</p> <p>1 part of that energy.</p> <p>2 Q. In the August 11, 1994 letter, am I</p> <p>3 correct that Ven-A-Care was giving to its carrier</p> <p>4 a partial refund of reimbursement for parental</p> <p>5 nutrition solutions under CPT Codes 4184 and</p> <p>6 4186.</p> <p>7 A. That's what it states, yes.</p> <p>8 Q. In the September 1994 letter, Ven-A-</p> <p>9 Care was giving to Palmetto a partial refund of</p> <p>10 reimbursement for payments received and claims</p> <p>11 submitted under CPTC Code B4186 for parental</p> <p>12 nutrition solution lipids. Correct?</p> <p>13 A. That's what it states, correct.</p> <p>14 Q. And in Exhibit 542, likewise Ven-A-Care</p> <p>15 was making a partial refund to Medicare for</p> <p>16 reimbursement that it received for parental</p> <p>17 nutrition solutions under CPT code 4197. Is that</p> <p>18 correct?</p> <p>19 A. Again, that's what the letter states,</p> <p>20 correct, yes.</p> <p>21 Q. Do these represent all of the payments</p> <p>22 that Ven-A-Care received prior to the date of</p>	<p style="text-align: right;">Page 391</p> <p>1 exhibits, can you tell me whether this is likely</p> <p>2 all of the claims that Ven-A-Care submitted to</p> <p>3 Medicare for parental nutrition solution lipids</p> <p>4 prior to July 5th, 1995?</p> <p>5 A. I cannot represent what that would be,</p> <p>6 no. We were not a large Medicare provider, and I</p> <p>7 just don't have the breakdown of what those</p> <p>8 claims would have been. I'm sorry.</p> <p>9 Q. Was the purpose of these letters to</p> <p>10 repay to Medicare all of the profit that Ven-A-</p> <p>11 Care had made by administering these specific</p> <p>12 parental nutrition services?</p> <p>13 MR. BREEN: Objection. Form.</p> <p>14 THE WITNESS: I can only quote what it</p> <p>15 says in No. 4, that also be reimbursing any</p> <p>16 Medicare secondary carrier or patients who have</p> <p>17 made copayments based on Medicare's original</p> <p>18 determination of the, quote, reasonable charges.</p> <p>19 So the reasonable charges do contain</p> <p>20 profit that I'm aware of.</p> <p>21 BY MR. COOK:</p> <p>22 Q. Do Exhibits 540, 541 and 542 attach all</p>
<p style="text-align: right;">Page 390</p> <p>1 each letter for each of these CPT codes?</p> <p>2 A. I do not know.</p> <p>3 Q. So it's possible that Ven-A-Care</p> <p>4 retained some of the money for other patients and</p> <p>5 other services that it provided aside from these</p> <p>6 few that it refunded. Correct?</p> <p>7 MR. BREEN: Objection. Form.</p> <p>8 THE WITNESS: It is possible, yes.</p> <p>9 BY MR. COOK:</p> <p>10 Q. Just taking Exhibit 540, which relates</p> <p>11 to payments for CPT Code 4184 and 4186, do you</p> <p>12 know what CPT Code B4184 and 4186 represent?</p> <p>13 A. I don't have specific recollection. I</p> <p>14 seem to remember that this was billing that was</p> <p>15 done based on the lipid content percentage, in</p> <p>16 this case the twenty -- ten percent and 20</p> <p>17 percent concentrations. The amounts I don't</p> <p>18 recall if they're up to a liter of each or 500</p> <p>19 mls of each. I don't specifically recall, no.</p> <p>20 Q. Well, just judging from the size of the</p> <p>21 stack here, for Exhibits 540, 541 and 542, and</p> <p>22 the number of claims described in those three</p>	<p style="text-align: right;">Page 392</p> <p>1 of the instances in which Ven-A-Care made in</p> <p>2 excess of the 40 percent mark-up described in</p> <p>3 your letter to the carriers in Exhibits 540, 541,</p> <p>4 542?</p> <p>5 A. I couldn't tell you for sure.</p> <p>6 Q. You signed the letters. Correct?</p> <p>7 A. I signed two of the letters, yes.</p> <p>8 Q. Was this review of Ven-A-Care's past</p> <p>9 billings in 1994 done at your review -- done at</p> <p>10 your request?</p> <p>11 A. No.</p> <p>12 Q. You were president of Ven-A-Care.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. Did you know that this review was being</p> <p>16 done?</p> <p>17 A. I was aware that there was always</p> <p>18 reviews, investigations, information that was</p> <p>19 being looked at and evaluated within the scope of</p> <p>20 Ven-A-Care's businesses, practices.</p> <p>21 Q. What did this particular review consist</p> <p>22 of?</p>

31 (Pages 389 to 392)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis - Vol. II

March 4, 2008

Miami, FL

Page 521	Page 523
<p>1 interaction in relationship between Abbott, the 2 marketing of their products, and the different 3 routes that we had as far as purchasing their 4 products. 5 Q. What steps did Abbott take to market 6 its infusion products to you, Mr. Cobo? 7 MR. BREEN: Objection. Form. 8 THE WITNESS: We would be marketed 9 through -- I'm trying to -- GPOs that would have 10 Abbott contracts that would need to be renewed, 11 drug wholesalers that represented some of the 12 Abbott contracts and would participate in their 13 reimbursement -- or rather providing the Abbott 14 products based on the Abbott contracts that were 15 had by providers, and Ven-A-Care in particular. 16 We certainly were provided with Abbott 17 pricing catalogs and access to Abbott prices that 18 were available through some of the relationships 19 that were had by various GOPs and/or wholesalers. 20 BY MR. COOK: 21 Q. Are there any other allegations in 22 Exhibit 547 that you witnessed with your own</p>	<p>1 scope of documents in discovery and things like 2 that that I've come across specifically computer 3 programs from drug manufacturers. 4 Q. In fact, Mr. Cobo, you've never seen an 5 Abbott advertisement for any of the drugs listed 6 in paragraph 30 that markets the difference 7 between average wholesale price and acquisition 8 cost for those drugs, have you? 9 MR. BREEN: Objection. Form. 10 THE WITNESS: Well, again, my concept 11 of marketing the spread is as basic and 12 fundamental as making a representation of a 13 price, whether it's a contract price, average 14 wholesale price, all those things, you know, 15 serve to provide information which is reflective 16 of the spread, and I consider those as 17 representations of marketing the spread. 18 BY MR. COOK: 19 Q. So it's your testimony that Abbott 20 marketed the spread by offering lower prices to 21 customers? Do I have that correct? 22 MR. BREEN: Objection. Form.</p>
Page 522	Page 524
<p>1 eyes, Mr. Cobo? 2 A. Thirty-six, "Abbott documents show that 3 the company actively marketed the government- 4 funded profits or 'spreads' on its drug created" 5 -- this would I think encompass a lot of the 6 pricing lists that again I just stated that we 7 had received from various GPOs and wholesalers 8 and pricing catalogs from Abbott. All those 9 were, in our eyes, certainly representations of 10 the spread. 11 Q. Mr. Cobo, you've seen documents from 12 other manufacturers that describe the difference 13 between AWP and acquisition cost. Correct? 14 A. Yes. 15 Q. You've seen computer programs from 16 other manufacturers that would calculate the 17 amount of money that one would make by purchasing 18 a drug and obtaining reimbursement based upon 19 AWP. Correct? 20 A. Computer programs by manufacturers? 21 Q. Yes. 22 A. I can't tell you that outside of the</p>	<p>1 THE WITNESS: I think the issue is more 2 not just in offering lower prices, but in also 3 creating AWP's that in this particular instant 4 that are used by, you know, Medicaid and Medicare 5 for reimbursement. You know, when there is a 6 large variance in the acquisition price, in the 7 average wholesale price that is represented, and 8 fraudulently so, I mean, I think that represents 9 the spread that we're discussing and I think is a 10 tool for marketing the spread. 11 BY MR. COOK: 12 Q. Can you point to any other activity by 13 Abbott in which Abbott actively marketed the 14 spread for the drugs listed in Exhibit 30? 15 A. Not immediately as I sit here right 16 now, no. 17 Q. What other allegations in Exhibit 547 18 did you see with your own eyes, Mr. Cobo. 19 A. Forty-two. "While the majority of the 20 states published AWP's to calculate" -- "published 21 AWP's to calculate reimbursement, approximately 22 six states....have used wholesale acquisition</p>

64 (Pages 521 to 524)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis - Vol. II

March 4, 2008

Miami, FL

Page 525	Page 527
<p>1 cost (WAC) to set the EAC."</p> <p>2 I have seen representations of the</p> <p>3 reimbursement systems for various state Medicaid</p> <p>4 programs.</p> <p>5 Q. Where did you see these</p> <p>6 representations?</p> <p>7 A. Printed in the Red Book on a yearly or</p> <p>8 biyearly basis they would publish a list of the</p> <p>9 states and show the reimbursement formulas. I</p> <p>10 know prior to us having possession of some of the</p> <p>11 Red Books, you know, we had gotten information</p> <p>12 from states that were giving us their</p> <p>13 reimbursement formulations. And that's basically</p> <p>14 where I've seen that representation.</p> <p>15 Q. But you personally have participated</p> <p>16 only in the Florida Medicaid program. Correct?</p> <p>17 A. Personally what?</p> <p>18 Q. Participated only in the Florida</p> <p>19 Medicaid program. Correct?</p> <p>20 A. That is correct.</p> <p>21 Q. You've never submitted a claim or</p> <p>22 submitted a claim on behalf of anyone else to any</p>	<p>1 may have, and if it did, then I apologize, and</p> <p>2 retract my statement.</p> <p>3 Q. What else have you seen with your own</p> <p>4 eyes among the allegations in Exhibit 547?</p> <p>5 A. Well, with regard to 50, the United</p> <p>6 States knowingly -- "Abbott defrauded the United</p> <p>7 States by knowingly causing the Medicare and</p> <p>8 Medicaid programs to pay false or fraudulent</p> <p>9 claims for dextrose....sodium chloride solutions,</p> <p>10 sterile water, Vancomycin, and Acyclovir."</p> <p>11 Q. You saw Abbott cause the</p> <p>12 Medicare/Medicaid programs to pay false or</p> <p>13 fraudulent claims?</p> <p>14 A. I saw claims that had been paid, and I</p> <p>15 can't specifically tell you if it was some or all</p> <p>16 of these unique products that certainly had</p> <p>17 reimbursement amounts that were based on</p> <p>18 fraudulent or false price reporting by Abbott on</p> <p>19 its drug products.</p> <p>20 Q. Were these for Abbott products?</p> <p>21 A. I'm hesitating because I'd have to say</p> <p>22 yes for some. I just can't specifically go back</p>
Page 526	Page 528
<p>1 other Medicaid program other than Florida's.</p> <p>2 Correct?</p> <p>3 A. That is correct.</p> <p>4 Q. To the extent you have knowledge about</p> <p>5 how any other state calculated its reimbursement</p> <p>6 amounts, it's because you read it in publicly</p> <p>7 available sources. Correct?</p> <p>8 MR. BREEN: Objection. Form.</p> <p>9 THE WITNESS: No. I wouldn't say</p> <p>10 publicly available sources. There was a point in</p> <p>11 time when -- I mean, Red Books were not available</p> <p>12 publicly. They were only available to</p> <p>13 pharmacies.</p> <p>14 BY MR. COOK:</p> <p>15 Q. Is it your testimony that the Red Book</p> <p>16 doesn't sit in the Library of Congress even as we</p> <p>17 speak?</p> <p>18 A. If it sits there now, I'm not sure.</p> <p>19 But my only experience has been through the</p> <p>20 practice of pharmacy. I was not aware of the Red</p> <p>21 Book sitting in the Library of Pharmacy, you</p> <p>22 know, back in the late '80s, early '90s. And it</p>	<p>1 and visualize each and every claim that I may</p> <p>2 have seen.</p> <p>3 Q. Who submitted these claims?</p> <p>4 A. I think the scope, what I had seen</p> <p>5 would have been through Medicare -- I mean, Ven-</p> <p>6 A-Care's personal experience.</p> <p>7 Q. So these are Ven-A-Care claims.</p> <p>8 Correct?</p> <p>9 A. They would have been Ven-A-Care claims.</p> <p>10 Q. So it's your testimony that Ven-A-Care</p> <p>11 submitted false and fraudulent claims to the</p> <p>12 Medicare and Medicaid program. Correct?</p> <p>13 MR. BREEN: Objection. Form.</p> <p>14 THE WITNESS: No. It's my testimony</p> <p>15 that Ven-A-Care participated in a program that</p> <p>16 was undermined by Abbott and its false and</p> <p>17 fraudulent price reporting and received claims</p> <p>18 that it felt were based on those price reports</p> <p>19 and tried to highlight that.</p> <p>20 BY MR. COOK:</p> <p>21 Q. And just so I'm clear, none of Ven-A-</p> <p>22 Care's Complaints attaches any claims submitted</p>

65 (Pages 525 to 528)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis - Vol. II

March 4, 2008

Miami, FL

Page 529	Page 531
<p>1 by Ven-A-Care for the payment of any Abbott 2 products. Do I have that correct? 3 A. I believe -- not that I'm aware of. 4 Q. And recognizing the limits of human 5 memory, to be clear, you're not able to point me 6 today to any specific claims that Ven-A-Care 7 submitted for Abbott products that Ven-A-Care 8 contends was false or fraudulent. Correct? 9 MR. BREEN: Objection. Form. 10 THE WITNESS: That's correct. I could 11 not sit here today and do that. 12 BY MR. COOK: 13 Q. And in terms of your testimony that you 14 witnessed with your own eyes, Abbott causing 15 Medicare and Medicaid to pay a false or 16 fraudulent claim, in fact, you didn't witness 17 Abbott do anything with respect to those claims, 18 did you? 19 MR. BREEN: Objection. Form. 20 THE WITNESS: I witnessed the resultant 21 effect of Abbott's actions. You know, I was not 22 present at Abbott's corporate headquarters when</p>	<p>1 were able to compare published prices to price 2 lists available to Ven-A-Care to purchase these 3 GPOs and other sources. Correct? 4 A. Yeah, I guess that's correct, yes. 5 Q. Are there any other allegations in 6 Exhibit 547 that you witnessed with your own 7 eyes? 8 A. The scenario involving the fluctuation 9 of prices with Vancomycin with regard to its AWP 10 and the actual acquisition prices was something 11 that I also watched happen over the years, 12 through these same previously stated pricing 13 compendia, wholesale price list, contracts, 14 specialty wholesaler prices. 15 Q. Is there -- are there any other facts 16 or alleged facts contained in Exhibit 547 that 17 you witnessed with your own eyes through any 18 means other than reading a published price list 19 or reading a price catalog available to Ven-A- 20 Care? 21 MR. BREEN: Objection. Form. 22 THE WITNESS: That would also include</p>
Page 530	Page 532
<p>1 it was submitting fraudulent pricing information, 2 no. 3 BY MR. COOK: 4 Q. What else in Exhibit 547 did you see 5 with your own eyes, Mr. Cobo? 6 MR. BREEN: Objection. Form. 7 THE WITNESS: Sixty-five, where we -- 8 "Abbott reported increasingly higher prices for 9 the drugs from at least on or before January 1, 10 1991 through 2001. At the same time, the prices 11 that Abbott actually charged to its customers 12 decreased or remained the same." 13 BY MR. COOK: 14 Q. And you witnessed this because you saw 15 on the one hand Abbott's published prices. 16 Correct? 17 A. I saw the various representations that 18 Ven-A-Care had available to it, either in Pricing 19 compendia or its prices through contracts, GPO 20 prices, wholesale prices. You know, we were able 21 to observe that phenomena. 22 Q. So you saw this to the extent that you</p>	<p>1 electronic representations of such catalogs and 2 price lists as well. 3 And I guess the same would apply to the 4 other products, the large volume parentals, the 5 Acyclovir, you know, watching the fluctuations in 6 prices and the representations was something 7 that, you know, also was in that category of 8 products that I was able to personally see. 9 I think without really evaluating, 10 taking it apart line by line, I think that's a 11 general overview of some of the things that I've 12 specifically witnessed. 13 MR. COOK: Very good. Thank you. 14 We can go off the record for one 15 minute. Mr. Escobar and I will change place of 16 the. 17 THE VIDEOGRAPHER: The time is 3:57 18 p.m. Going off the record. End of videotape No. 19 6. 20 (Recess taken.) 21 THE VIDEOGRAPHER: The time is 4:03 22 p.m. We are back on the record. Videotape No.</p>

66 (Pages 529 to 532)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com